



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT KISUMU

PETITION NO. E005 OF 2026

IN THE MATTER OF: ARTICLES 1, 2, 3, 10, 19, 20, 21, 22, 23, 24,
41, 47,
50, 73 & 258 OF THE CONSTITUTION

AND

IN THE MATTER OF: UNLAWFUL RECRUITMENT OF MEMBERS
AND ELECTION OF TRADE UNION OFFICIALS AT KIBOS SUGAR &
ALLIED INDUSTRIES LIMITED.

BETWEEN

JEFFERY JAMES KOTIENO.....**1ST PETITIONER**

MICHEAL AGAWO MINYINGA.....**2ND PETITIONER**

JOHN ODHIAMBO.....**3RD PETITIONER**

FREDRICK OTIENO SINGA.....**4TH PETITIONER**

HUMPHREY OCHOLA MUTIVA.....**5TH PETITIONER**

NICHOLAS ODUOR ORAWO.....**6TH PETITIONER**

(Suing as officials of Star Allied Workers Development Group)

VERSUS

MICHEAL . O. GOMBE.....**1ST**

RESPONDENT

KENYA UNION OF SUGAR PLANTATION
AND ALLIED WORKERS.....**2ND**

RESPONDENT

AND

REGISTRAR OF TRADE UNIONS.....**1ST INTERESTED**

PARTY

THE CABINET SECRETARY MINISTRY OF LABOUR
AND SOCIAL PROTECTION.....**2ND INTERESTED**

PARTY

THE NATIONAL LABOUR BOARD.....**3RD INTERESTED**

PARTY

THE HON. ATTORNEY GENERAL.....**4TH INTERESTED**

PARTY

KIBOS SUGAR & ALLIED
INDUSTRIES LIMITED.....**5TH INTERESTED**

PARTY

RULING

1. Before the Court are two applications dated 3rd February 2026 and 6th February 2026 respectively, both brought under certificate of urgency. In the application dated 3rd February 2026, the Petitioners seek the following orders:

a. *Spent*

b. *Spent*

c. That the 1st Respondent be barred from occupying the office of National Treasurer of the 2nd Respondent or any National Office of the 2nd Respondent pending hearing and determination of this petition.

d. *Spent*

e. *Spent*

f. That costs of the application be awarded to the Petitioners.

g.

2. When the application was placed before the Court on 4th February 2026, the Court issued *ex parte* interim orders barring the 1st Respondent from occupying the office of National Treasurer of the 2nd Respondent or any other national office of the 2nd Respondent pending the hearing of the application. Additionally, the Court barred the Interested Parties from registering, recognizing, or gazetting the election of the 1st Respondent to the office of National Treasurer of the 2nd Respondent pending determination of the application.

3. The issuance of the said orders prompted the 2nd Respondent to file the application dated 6th February 2026 seeking the following orders:

i. Spent

ii. That pending hearing and determination of the application the honourable court be pleased to review and or vary the interim order of temporary injunction issued on 4th February 2026 by allowing the 1st Respondent to occupy his office and proceed with his duties as the National Treasurer of the 2nd Respondent.

iii. That pending the hearing and determination of the petition and or suit the honourable court be pleased to discharge and or set aside the interim temporary orders of injunction issued on 4th February 2026 barring the 1st Respondent from occupying the office of the National Treasurer of the 2nd Respondent.

4. Vide directions issued on 17th February 2026, the Court directed that the two applications be considered together. In support of the application dated 3rd February 2026, the 1st Petitioner swore a supporting affidavit. He deposes that the 1st Respondent disregarded the Petition herein, which sought to bar him from vying for a national position within the 2nd Respondent, and nevertheless proceeded to vie for the position of National Treasurer. According to the deponent, this conduct is contemptuous and reduces the Petition to a mere academic exercise. He further contends that the election is void *ab initio* since the 1st Respondent was not eligible to vie for the position on account of not being a delegate of any branch. On this basis, the Petitioners urge that it is in the interest of justice for the Court to intervene and restrain the 1st Respondent from discharging the duties of National Treasurer.

5. In opposition to the application, a replying affidavit sworn by Mr. Francis Wangara, the 2nd Respondent's Secretary General, was filed. He deposes that the Petition does not seek to bar the 1st Respondent from vying for any national

position. He further deposes that the 1st Respondent is qualified to run for any national office since the requirements for national positions differ from those for branch positions. In any event, he avers that the 1st Respondent is the incumbent Treasurer and is therefore entitled to defend his seat. According to the deponent, the Petitioners are using the Court to settle personal scores, and it would therefore be unfair for the Court to grant the orders sought.

6. With regard to the application dated 6th February 2026, a supporting affidavit was also sworn by Mr. Francis Wangara. He deposes that branch elections are distinct from national elections in terms of the requirements set out in the 2nd Respondent's Constitution. He further states that the election of the 1st Respondent cannot be impugned as it was conducted in accordance with the 2nd Respondent's Constitution. Of particular importance, the deponent asserts that barring the 1st Respondent from assuming office would cripple the operations of the 2nd Respondent, as he is the signatory to its accounts. He maintains that such a scenario would render the 2nd Respondent unable to meet its financial obligations, a situation that should not be countenanced. He

further states that the Constitution does not require that only branch delegates are eligible for national office. According to him, the Petitioners are merely seeking to settle personal scores and therefore the 1st Respondent should not be barred from assuming office. Additionally, he contends that the Petitioners lack *locus standi* to challenge the affairs of the national office since their earlier application dated 15th January 2026 related to issues concerning the Kibos Branch.

7. In response to this application, the 1st Petitioner swore a replying affidavit on 8th February 2026. He maintained that once the 1st Respondent's tenure lapsed on 21st January 2026, he was required to seek a fresh mandate before vying, pursuant to Rule 15(g) of the 2nd Respondent's Constitution, which he failed to do. With regard to the allegation that barring the 1st Respondent from office would cripple the affairs of the 2nd Respondent, the deponent states that the Assistant Treasurer could stand in for the 1st Respondent on an interim basis and that no operational crisis would arise.
8. On the issue of *locus standi* to challenge the national elections, the deponent states that the Petitioners are

members of the Kibos Sugar & Allied Welfare Association and are therefore entitled to represent employees of the company in matters relating to welfare and labour relations. He further states that they are members of the 2nd Respondent and have filed the application in good faith.

Petitioners' Submissions

9. In support of their application dated 3rd February 2026, the Petitioners identified the following issues for determination: whether the Applicants have met the threshold for the grant of interim injunctive relief; whether they have established a basis for the grant of conservatory orders; and whether the Interested Parties should be restrained from registering or gazetting the purported election of the 1st Respondent.
10. On the first issue, the Petitioners submitted that they had met the threshold for grant of interlocutory injunctions as set out in **Giella v Cassman Brown & Co. Ltd [1973] EA 358**, where the Court held that an applicant must demonstrate a *prima facie* case with a probability of success, that they stand to suffer irreparable harm not compensable by damages, and that where the Court is in doubt, the matter

should be determined on a balance of convenience. They further relied on **Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] KECA 175 (KLR)**, where a *prima facie* case was defined as one which, on the material presented, a tribunal properly directing itself would conclude that a right has been infringed.

11. They submitted that a *prima facie* case has been demonstrated by the 1st Respondent's lack of eligibility to vie for national office. They cited the fact that he was not a duly elected branch delegate as is required by Rule 2(d) and (e) of the 2nd Respondent's Constitution, there was no lawful branch election as required by Rule 15(g) of the Constitution and his candidature was contrary to the Labour Relations Act and the Union's Constitution. The Petitioners further submitted that the union constitution provides that branch delegates to the annual conference must be the three principal officials of each branch and must be fully paid-up members. They contended that the 1st Respondent did not meet these requirements. They also averred that under the union constitution branch officials are required to be elected every five years, and evidence annexed to the supporting

affidavit indicated that the 1st Respondent's term had lapsed on 21st January 2026.

12. The Petitioners maintained that there were no valid elections at the Kibos branch level hence it lacked officials and members and was therefore incapable of producing a lawful delegate. They asserted that permitting the 1st Respondent to continue acting as National Treasurer would create confusion within the union, disrupt workplace harmony and undermine lawful representation structures. They further contended that his decision to vie for the position despite the pending Petition demonstrated disregard for due process and the authority of the Court.

13. On the second issue the Petitioners submitted that unless the orders sought are granted, the 1st Respondent would assume and continue to exercise the powers of National Treasurer, including making financial decisions, entering into contractual obligations and altering representation structures within the union. They asserted that such actions would occasion institutional harm that could not be adequately remedied through monetary damages. In this

regard they reiterated the principle in **Giella v Cassman Brown & Co. Ltd** (*supra*) that irreparable harm refers to injury that cannot be compensated by an award of damages. They further submitted that the 1st Respondent's continued occupation of the office would render the Petition nugatory because the central issue in the Petition concerns his eligibility to hold the office. They relied on Board of **Board of Management of Uhuru Secondary School v City County Director of Education & 2 others [2015] KEHC 2174 (KLR)**, for the proposition that interim relief is warranted where failure to grant such relief would render proceedings nugatory. The Petitioners also argued that public interest favours the grant of conservatory orders since it is important that trade union officials are elected in accordance with the law and that ongoing court proceedings are not rendered academic.

14. On restraint of the Interested Parties, the Petitioners submitted that the registration of the 1st Respondent would legitimize an unlawful election process and complicate the remedial powers of the court. They therefore urged the court

to restrain the Interested Parties from recognizing or gazetting the 1st Respondent pending the determination of the Petition.

15. In opposing the 2nd Respondent's application dated 6th February 2026, the Petitioners identified the following issues for determination:

- a. whether the Court should discharge or set aside the interim orders and
- b. whether the Petitioners will suffer prejudice if the orders are discharged or set aside.

16. On the question of discharge of the interim orders, the Petitioners submitted that the orders should not be set aside as they were not obtained through concealment of material facts. In support of this position, they relied on **Atlas Copco Customer Finance AB v Polarize Enterprises [2016] eKLR** and **Wachira v Maina & another (Environment and Land Appeal E003 of 2022) [2024] KEELC 3701 (KLR)**, where the courts identified concealment of material

facts, fraud, and misrepresentation as grounds for setting aside interim orders.

17. Regarding the issue of prejudice, the Petitioners submitted that they would suffer immensely if the orders are set aside. They reiterate the blatant disregard of the 2nd Respondent's constitution as well as the contemptuous way the 1st Respondent has treated the court.

2nd Respondent's Submissions

18. The Respondents submitted that the 1st Respondent was eligible to run for re-election pursuant to Rule 7(d) of the 2nd Respondent's Constitution, which allows incumbent officials to seek re-election. They further asserted that the 1st Respondent is the sole signatory to the 2nd Respondent's bank accounts and that in his absence no financial transactions, including payment of salaries, can be undertaken. They therefore argued that the union's operations would be severely crippled if the interim orders remain in force. The Respondents further submitted that the application dated 3rd February 2026 had been overtaken by

events since the gazettelement of the 1st Respondent had already occurred. They also contended that the Petition does not challenge the national elections, and that the said elections are not the subject of the suit before the Court. According to the Respondents, since the Petition relates to issues concerning the Kibos Branch, the Petitioners will suffer no prejudice if the interim orders are set aside, whereas the Respondents stand to suffer significant prejudice if the orders remain in place.

19. In view of the foregoing, the Respondents submitted that the application dated 3rd February 2026 is intended solely to frustrate the 1st Respondent. In this regard they relied on **Kipkorir v Secretary KUPPET & 2 others (Cause E012 of 2021) [2021] KEELRC 3764 (KLR)**. They therefore urged the Court to dismiss the application.

Disposition

20. The matters for determination herein are twin, whether the Court should sustain its orders issued herein and whether there has been laid before the Court sufficient reason to grant the reliefs sought by the Respondents.

21. By way of brief background, the Petitioners moved Court to bar the election of the 1st Respondent as the National Treasurer of the 2nd Respondent. The Court having considered the gravamen of the allegations of unconstitutionality of the 1st Respondent occupying any office in the 2nd Respondent or any national office, granted interim orders. The Respondents on their part challenge the action by the Petitioners ostensibly because there is an alleged Gazette Notice that seems to confer position on the 1st Respondent in the 2nd Respondent.

22. In the case of **Giella v Cassman Brown & Co. Ltd** (*supra*), the Court held that an applicant must demonstrate a *prima facie* case with a probability of success, and that they stand to suffer irreparable harm that is not compensable by damages. Where the Court is in doubt, the matter should be determined on a balance of convenience. In the case of **Mrao Ltd v First American Bank of Kenya Ltd & 2 others** (*supra*) the Court of Appeal defined a *prima facie* case as one which, on the material presented, a tribunal properly directing itself would conclude that a right has been

infringed. Before the Court at the time the orders were issued, was sufficient basis for the grant of the said orders. The 1st Respondent was not elected as a branch official of the 2nd Respondent as no nominations or election took place in terms of the 2nd Respondent's constitution and secondly, there was no basis for the 1st Respondent to offer himself as candidate at the ensuing elections of national officials having not been nominated or elected to any position in terms of the constitution of the 2nd Respondent.

23. The Court was notified in the motion by the Respondents that the action sought to be stopped by the Court had already taken place after the Court issued the orders and that the 1st Respondent was entitled to the position he held on account of the gazettelement that had taken place post grant of injunctive relief in the Petition herein. The mere fact that an illegality occurred in gazettelement of the 1st Respondent does not confer any rights on the 1st Respondent or on the 2nd Respondent or any of the Interested Parties to give any effect to the proposition of the 1st Respondent as an alleged official of the 2nd Respondent. Constitutions, even those of trade unions are the guard rails against arbitrariness

and fiefdoms. These constitutions at the trade union level provide for systematic execution of the lawful exercise of the rights under Article 41 and cannot be wished away. The 2nd Respondent is disingenuous in proposing that because the 1st Respondent already held a position in the 2nd Respondent he was eligible to vie for another office. The qualification of any trade union official in the 2nd Respondent is guided by the 2nd Respondent's constitution which Mr. Francis Wangara, the 2nd Respondent's Secretary General should read and familiarise himself with.

24. Under the relevant constitutions the tenure of office as well as the provisions of section 34 of the Labour Relations Act, 2007 further provides that the prescribed term for officials of all Trade Unions, Employers' Organizations, and Federations is five years. As such trade union officials such as the 1st Respondent are required to be elected through secret ballot at least once every five years.

25. The Court finds that in the prism of **Giella v Cassman Brown** and **Mrao Ltd v First American Bank of Kenya Ltd & 2 others** there was sufficient basis to grant the relief

the Petitioners obtained and further that the actions of the 2nd Respondent and the Interested Parties in gazettelement of the 1st Respondent as an official amounted to nothing as the same was illegal, null and void *ab initio*. It is as if there was no gazettelement since there was no legal basis to recognise the 1st Respondent as an official of the 2nd Respondent as no trade union elections were held to elevate him to the vaunted position of a trade union official.

26. In sum, the Court affirms the interim orders granted to subsist till the hearing and determination of the Petition herein. The notice of motion application by the Respondents is hereby dismissed with costs to the Petitioners. For avoidance of doubt, the 1st, 2nd and 3rd Interested Party are to take remedial action to urgently rectify the illegal gazettelement of the 1st Respondent. Directions on the disposal of the Petition proper shall follow this Ruling.

It is so ordered.

Dated and delivered at Kisumu this 12th day of March

2026

**Nzioki wa Makau, MCIArb.
JUDGE**